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Chair: Mr. Kohona ..... (Sri Lanka)
later: Mr. Salem (Vice-Chair) ..... (Egypt)

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The meeting was called to order at 3 p.m.

Agenda item 86: The scope and application of the principle of universal jurisdiction (*continued*) (A/68/113)

1. **Mr. Silberschmidt** (Switzerland), speaking also on behalf of Liechtenstein, said that universal jurisdiction helped to ensure that those guilty of the most serious crimes in a given jurisdiction were prosecuted if that so jurisdiction was unable to do so. For some criminal offences, universal jurisdiction was required under applicable international treaties or could be invoked on the basis of customary law. However, Member States' positions on the issue differed widely: some had incorporated the principle into their national law, while others had not; some had established it in respect of a wide variety of offences, while others concentrated on genocide, war crimes and crimes against humanity; and some saw a risk of abuse, while others considered the principle a crucial pillar in the effort to combat impunity for the worst crimes.

2. The diversity of views and practices among Member States had hindered progress in the Committee's discussions in recent years; the establishment of a Working Group on the topic was therefore a positive development. However, given the juridical and technical nature of the topic, the possibility of involving the International Law Commission in the debate should be given serious consideration. The Commission could be mandated to consider the status of universal jurisdiction under international law as a whole, or to help provide answers to more specific legal questions through an analytical study focusing on the exercise of universal jurisdiction by national courts in criminal proceedings, similar to its 2006 study on the fragmentation of international law. To that end, it could draw on progress made on other topics on its agenda, such as the obligation to extradite or prosecute (*aut dedere aut judicare*).

3. **Mr. Belaid** (Algeria) said that universal jurisdiction was an important instrument in combating impunity for serious crimes, provided that it was applied in good faith and in accordance with principles of international law, such as State sovereignty, territorial jurisdiction, the primacy of action by States in criminal prosecutions, the protective principle and, most of all, the immunity of incumbent Heads of State and Government. Universal jurisdiction should be a complementary mechanism and a measure of last resort.

4. His Government was concerned about the selective, politically motivated and arbitrary application of universal jurisdiction without due regard for international justice and equality. The International Criminal Court, throughout its 11 years of existence, had focused exclusively on African States while ignoring unacceptable situations in other parts of the world. Accordingly, at its extraordinary session held in Addis Ababa on 12 October 2013, the Assembly of the African Union had decided that, to safeguard the constitutional order, stability and integrity of its member States, no charges should be commenced or continued before any international court or tribunal against any serving African Union Head of State or Government or anyone acting or entitled to act in such capacity during his or her term of office. In that light, his delegation supported the Committee's continued work on the scope and application of the principle of universal jurisdiction on the basis of respect for the sovereign equality and political independence of States.

5. **Ms. Tatarinovich** (Belarus) said that, before aspects of the principle of universal jurisdiction could be reflected in national legislation, the specific crimes to which it applied — which should include crimes against peace, war crimes, crimes against humanity and piracy — must be established in international law. In practice, limited universal jurisdiction already existed over crimes that were the subject of international conventions, provided that a link existed between the alleged perpetrator and the forum State. Her Government favoured a treaty-based, rule-of-law approach to universal jurisdiction, which could be considered legitimate only if it was consistent with generally accepted norms of international law and the Charter of the United Nations; otherwise, it amounted merely to the extraterritorial application of the laws of individual States.

6. It was important to rid the concept of universal jurisdiction of its inherent contradictions and of shortcomings resulting from the lack of functioning international cooperation mechanisms, the absence of a clear list of crimes to which it applied, the practice of in absentia convictions and issues concerning its applicability to individuals who enjoyed privileges and immunities under international law. The perpetrators of

international crimes should be prosecuted and punished in accordance with States' international obligations and domestic laws. Universal jurisdiction was optional and should be applied only where national jurisdiction lacked effect, and in good faith. A balance needed to be struck between the progressive development of the principle of universal jurisdiction and respect for the principles of equity, sovereign equality of States and non-interference in their internal affairs.

7. The Committee and the Working Group on the scope and application of the principle of universal jurisdiction should seek to establish consensus on a list of crimes to which universal jurisdiction could be applied. States' views expressed in that regard might also be useful to the International Law Commission in the context of its examination of the obligation to extradite or prosecute (*aut dedere aut judicare*). Her delegation supported the proposal that the Committee and the Commission should cooperate in that regard.

8. **Mr. Gebremeskel Zewdu** (Ethiopia) said that his Government was committed to the application of the principle of universal jurisdiction, which was enshrined in the Criminal Code of Ethiopia as a complementary instrument in the effort to combat impunity. Universal jurisdiction should be exercised in accordance with universally recognized rules of international law. The primary responsibility for prosecution rested with the Member State where the crime had been committed; universal jurisdiction should be invoked only for serious crimes that affected the whole of humanity and were condemned by the international community.

9. The absence of a generally accepted definition of universal jurisdiction and a lack of consensus on the offences that were subject to it had made it difficult to strike an appropriate balance between bringing perpetrators to justice and limiting the scope and application of the principle. Differing approaches had resulted in subjectivity that was undermining the common resolve to combat impunity. The various decisions of the Assembly of the African Union reflected its concern about prosecutions instituted and arrest warrants issued by certain foreign courts against sitting African Heads of State and Government and other high-ranking officials, in violation of the immunity granted to them under international law. State sovereignty and the primacy of action by States in criminal prosecutions and the immunities to which certain State officials were entitled under international law must be respected when applying universal jurisdiction.

10. The General Assembly should therefore adopt a resolution limiting the scope and application of the principle and urging Member States to refrain from its misapplication. The Committee should also explore the possibility of developing a consistent standard in that regard that would be acceptable to all Member States.

11. **Mr. Joyini** (South Africa) said that true universal jurisdiction applied only to crimes under customary international law. However, in recent years a number of multilateral treaties had conferred quasi-universal jurisdictional powers on their States parties by requiring them to prosecute or extradite persons accused of certain international crimes who happened to be present in their territory. Such jurisdiction was known as conditional universal jurisdiction, in that the exercise thereof was conditional upon the presence of the accused person in the forum State, which might otherwise have no other jurisdictional link to the crime. Thus it was largely left to national courts to enforce international criminal law by prosecuting enemies of all humankind in whose punishment all States had an equal interest.

12. The laws of the country in question determined whether a criminal prosecution or a civil case for damages could be brought on the basis of universal jurisdiction. Most States, including South Africa, would not try a person for an international crime unless the conduct had been criminalized under domestic law. His Government had incorporated a wide range of international crimes under treaties such as the Rome Statute of the International Criminal Court and the Geneva Conventions of 1949 into the country's domestic law, thus providing for a form of universal jurisdiction. It had also adopted legislation providing for extraterritorial jurisdiction over mercenary activities and foreign military assistance, where there was a jurisdictional link to South Africa. In a recent court case, it had been found that the South African authorities, in accordance with the law on the implementation of the Rome Statute and the Constitution, were under an obligation to investigate and, where appropriate, prosecute nationals of another country accused of torture of their fellow citizens in their own country on the basis of their presence in South African territory. However, that finding was currently under appeal in the Supreme Court of Appeal.

13. Despite the general consensus that universal jurisdiction was an important principle in combating impunity, a number of issues remained unresolved: the definition of the principle and the need to distinguish it from related concepts, such as the jurisdiction exercised by international criminal tribunals established by treaties; the relationship between the obligation to extradite or prosecute and the jurisdiction of national courts, in particular the question of which system had primacy; the temporal immunity of Heads of State and the assurance of due process and fairness in national proceedings based on universal jurisdiction; the question of which crimes were subject to universal jurisdiction, beyond those on which there was general agreement, which included piracy, slavery, war crimes, crimes against humanity, genocide and, by convention, torture and certain international terrorist crimes; the possible politicization or selective and arbitrary application of the principle; and the possible referral of the topic to the International Law Commission. While there was a growing conviction worldwide that impunity should no longer be tolerated and that human rights must be protected, a balance must be struck between those imperatives and the need to respect State sovereignty.

14. **Ms. Bagley** (United States of America) said that, despite the importance of the principle of universal jurisdiction and its long history as a part of international law relating to piracy, basic questions concerning its exercise in respect of universal crimes remained. The practical application of universal jurisdiction, including whether and how often it was invoked; the question of whether alternative bases for jurisdiction could be relied upon simultaneously; and the available safeguards to prevent inappropriate prosecution merited further examination. Her delegation would welcome information on the practice of other States and looked forward to considering the issues in as practical a manner as possible.

15. **Ms. Enersen** (Norway) said that the international community was united in its opposition to impunity for the most serious crimes of international concern. Universal jurisdiction had gained ground as a fundamental principle of criminal law at both the national and the international levels. The primary responsibility for the investigation and prosecution of crimes lay with the territorial State or the State or States with personal jurisdiction; in most cases, the territorial State was best placed to gather evidence, secure witnesses and ensure that those affected by the crime received accurate information on the case. The application of universal jurisdiction should, in principle, be considered only when States were unable or unwilling to apply other types of criminal jurisdiction.

16. Her delegation welcomed the Working Group's development of a working concept of universal jurisdiction, which would help to bring clarity to the Committee's deliberations. However, any attempt to develop an exhaustive list of crimes to which universal jurisdiction applied was likely to prove fruitless and would involve an unprecedented attempt to harmonize Member States' interpretation of their treaty obligations, which was not the task of the General Assembly.

17. Universal jurisdiction should be applied only in the interests of justice; appropriate checks and balances and ways of limiting its misuse for political purposes should therefore be explored. A study of best practices in independent prosecutorial offices would be useful for that purpose. A priority issue was how to ensure prosecutors' independence from political and other external influences. A number of United Nations documents, such as the Guidelines on the Role of Prosecutors, adopted by the eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, could be useful in that regard. Other relevant questions were whether and how prosecutorial discretion applied to cases that were subject to universal jurisdiction in various States; where and to whom competence to decide on the matter was bestowed within States and whether that decision was collegial or not; and to what extent a prosecutorial decision on universal jurisdiction could be appealed.

18. The Committee should not engage in a discussion on immunity for State officials under the current agenda item, as that topic was not uniquely relevant to universal jurisdiction; immunity from criminal prosecution could, along with other factors relating to criminal liability, be relevant in cases involving any form of jurisdiction. Furthermore, the question was under consideration by the International Law Commission, and deliberations in the Committee were unlikely to be fruitful.

19. **Mr. Al-Ghanem** (Qatar) said that universal jurisdiction was an important mechanism for ensuring

the rule of law and equitable justice and combating impunity for serious violations of international law, international humanitarian law and human rights. Given the wide range of views on the topic among States, the Working Group should define those points on which there was consensus and those that required further study and consultation.

20. Universal jurisdiction and international criminal jurisdiction shared the same objective of putting an end to impunity, as affirmed by relevant General Assembly resolutions. Nonetheless, it was important to define the principle of universal jurisdiction and to clarify which crimes, beyond piracy, crimes against humanity, war crimes, genocide and gross violations of human rights, fell within its scope. His delegation would rely on the Working Group's conclusions and recommendations in that regard.

21. While there was a need to bring the perpetrators of international crimes to justice, universal jurisdiction should be exercised in accordance with internationally agreed mechanisms, in good faith and in compliance with the principles of international law. In order to define the scope of universal jurisdiction, it was important to strike a balance between the progressive development of the concept and the need to uphold the principles enshrined in the Charter of the United Nations, including the sovereign equality of States.

22. Serious violations of international law were occurring in numerous regions, including the Middle East; millions of people were being displaced and peaceful citizens were being subjected to aerial bombardment and terrorized simply for asserting their legitimate rights to liberty, dignity and self-determination. The perpetrators were exploiting lacunae in the international regime and the weakness of international political will in order to continue committing their crimes with impunity. The scope of universal jurisdiction must cover such crimes and the perpetrators must be brought to justice, in order to send a clear message that no one was above the law.

23. **Ms. Rodríguez Pineda** (Guatemala) said that the exercise of universal jurisdiction was acceptable in respect of certain serious international crimes that shocked humanity as a whole and where conventional jurisdiction could not be exercised. In such cases, all States had a responsibility to bring the perpetrators to justice. The International Criminal Court, though responsible for administering international justice, did not exercise universal jurisdiction, but universal jurisdiction remained particularly pertinent in cases where the Court's jurisdiction could not be invoked. In that connection, her Government reaffirmed its commitment to supporting the Court's universality and integrity.

24. Universal jurisdiction was indirectly linked to, but also differed in certain respects from, the jurisdiction exercised by international tribunals, certain forms of extraterritorial jurisdiction, the obligation to extradite or prosecute, and the immunity of State officials from foreign criminal jurisdiction. Given the complexity of the issue and the inadequacy of the information gathered so far on States' views and practices, her delegation agreed with the proposal that the International Law Commission should be requested to prepare a study on the status of the principle in international law, which would provide a solid legal basis for consideration of its scope and application. The informal papers on the topic prepared by the Office of Legal Affairs in 2010 should also form part of the discussion.

25. The diversity of legal systems around the world created a risk of subjective interpretation of the principle, and many countries lacked the capacity to try extraterritorial criminal cases; the Commission's involvement might be helpful in that context. It would also prevent duplication of work, as the Commission was already considering important issues linked to universal jurisdiction in the context of its deliberations on the obligation to extradite or prosecute and the immunity of State officials. Furthermore, the Commission would be able to ensure that political considerations did not overshadow the legal issues; the Committee's deliberations, on the other hand, might prove to be both lengthy and fruitless.

26. **Mr. Estrémé** (Argentina) said that the primary responsibility for the investigation and prosecution of international crimes lay with the States in which the crimes were committed or with other States that had a link with the crime, such as the State of nationality of the perpetrator or the victims. Where those States were unable or unwilling to prosecute, other States could do so on the basis of universal jurisdiction, which was an additional tool to be used in exceptional circumstances in order to prevent impunity. Universal jurisdiction was thus an essential component of the international criminal justice system. Its unlimited use could, however, lead to conflicts of jurisdiction between

States, procedural abuse and politically motivated prosecutions. Clear rules for its exercise were needed, particularly in the light of certain erroneous interpretations of the principle.

27. The Working Group on the topic should take a step-by-step approach, focusing first on the concept of universal jurisdiction and then on its status in international law, including the legislative and judicial practices of States, and the conditions under which it might be exercised. Discussion of the concept should seek to distinguish it from the principles of *jus cogens*, *obligatio erga omnes* and, especially, *aut dedere aut judicare*. The possibility of referring the matter to the International Law Commission should not be ruled out; the Commission could be asked to produce a study in parallel with the Committee's consideration of the topic.

28. The examination of international treaties, internal legislation and judicial practice must take into account the difference between the obligation *aut dedere aut judicare* and universal jurisdiction. The latter was included explicitly or implicitly in many multilateral treaties. As the International Law Commission had decided to focus on the former concept, the Working Group should consider the relationship between the two but concentrate primarily on the latter.

29. **Ms. Norsharin** (Malaysia) said that the Working Group should continue its thorough discussion of the scope and application of universal jurisdiction, as it was important to agree on a definition of the concept and to distinguish it from related concepts, such as international criminal jurisdiction and the obligation to extradite or prosecute. Universal jurisdiction was an attractive concept in that it provided all States with an opportunity to exercise jurisdiction over serious crimes of international concern and served as a means of deterring and punishing such crimes. However, prosecution in national courts on the basis of territoriality, nationality, the protective principle or passive personality should remain the primary avenue for combating impunity. Recourse to international criminal tribunals, permanent or ad hoc, was another possibility.

30. A clear definition of universal jurisdiction must be agreed upon before further progress could be made. Her delegation welcomed the comments submitted by Member States in that regard; however, there had not yet been a constructive discussion on the ultimate goal of the principle. A uniform view was imperative in order to avoid different standards of application in different countries. While her Government did not favour international regulation, it considered that States should exercise caution when applying universal jurisdiction or enacting related legislation.

31. The exercise of universal jurisdiction must be based on enabling domestic law. Malaysia already had a domestic legal framework in place: the Penal Code provided for extraterritorial jurisdiction in respect of terrorist offences, while another law empowered the courts to take jurisdiction over such offences. Further laws established extraterritorial jurisdiction in respect of offences such as trafficking in persons, computer crimes and money-laundering, and any offence that threatened Malaysia's security. Lastly, her delegation believed that the International Law Commission should conduct an in-depth study of the topic of universal jurisdiction.

32. **Mr. Choi** Yong Hoon (Republic of Korea) said that, while it was generally agreed that war crimes and piracy were subject to universal jurisdiction, there was a lack of consensus on other crimes, and on the definition of the principle more generally. Its application was legally complex and raised many practical questions, including who would exercise it and when and how it would be exercised. Universal jurisdiction should not be misused for political purposes and should be exercised in a manner that did not conflict with other peremptory norms of international law. In order to move forward on the topic, his delegation suggested that the International Law Commission should be asked to make a contribution, particularly in connection with its work on the principle *aut dedere aut judicare*.

33. **Mr. Silva** (Brazil) said that the aim of universal jurisdiction was to deny impunity to individuals allegedly responsible for extremely serious crimes defined by international law which, by their gravity, shocked the conscience of all humanity and violated peremptory norms of international law. As a basis for jurisdiction, it was of an exceptional nature compared to the more consolidated principles of territoriality and active and passive personality. Although the exercise of jurisdiction was primarily the responsibility of the territorial State in accordance with the principle of the sovereign equality of States, combating impunity for the most serious crimes was an obligation contained in numerous international treaties. Universal jurisdiction

should be exercised only in accordance with international law and principles; it should be subsidiary to domestic law and limited to specific crimes; and it must not be exercised arbitrarily or to fulfil interests other than those of justice.

34. His delegation supported an incremental approach to discussion of the issue; the Working Group's first step should be to seek an acceptable definition, which, together with a shared understanding of the scope and application of universal jurisdiction, was necessary in order to avoid improper or selective application. The Working Group should then consider the kinds of crimes to which such jurisdiction would apply and whether it was subsidiary to territoriality and personality as bases for jurisdiction. At the appropriate time, it should also consider whether the formal consent of the State where the crime had taken place and the presence of the alleged perpetrator in the territory of the State wishing to exercise jurisdiction were required. One of the most contentious issues was how to reconcile universal jurisdiction with the jurisdictional immunities of State officials. His delegation hoped that Member States could show flexibility in agreeing on some core elements in due course. At the current stage of discussion, it would be premature to consider the adoption of uniform international standards on the matter.

35. Brazil's legislation recognized the principles of territoriality and active and passive personality as bases for criminal jurisdiction. Its courts could exercise universal jurisdiction over the crime of genocide and other crimes, such as torture, which Brazil had a treaty obligation to suppress. Such jurisdiction must be envisaged in a State's domestic law; it could not be exercised on the basis of customary international law alone without violating the principle of legality. Although there was a difference between universal jurisdiction and the exercise of criminal jurisdiction by international tribunals, the two institutions shared a common objective: to deny impunity to those accused of serious international crimes.

36. **Mr. Gonzalez** (Chile) said that jurisdiction was an essential element of the rule of law and was inherent in State sovereignty. A proliferation of laws in recent years had led to the exercise of jurisdiction in an inconsistent manner and without regard for its traditional underpinnings: territoriality and the nationality of the perpetrator and, in some cases, that of the victim. Confusion and legal uncertainty had ensued; the international community should therefore clarify the question of jurisdiction within the framework of international law and establish a means of regulating universal jurisdiction by defining its conceptual framework and establishing its scope and application and possible exceptions thereto.

37. In his delegation's view, universal jurisdiction should apply only in exceptional circumstances and in respect of serious crimes under international law. The Working Group should not, therefore, include civil law matters in its deliberations. His Government recognized universal jurisdiction in cases of piracy pursuant to the United Nations Convention on the Law of the Sea, and war crimes pursuant to the 1949 Geneva Conventions and Additional Protocol I of 1977. Universal jurisdiction could also be exercised on the basis of international law, especially treaty law, in order to prevent impunity for crimes against humanity, war crimes and genocide.

38. The foremost principle governing jurisdiction was territoriality; the courts of the State in which the crime had been committed had primary jurisdiction to investigate and punish the perpetrators. States should exercise universal jurisdiction only when the territorial State was unwilling or unable to investigate and prosecute the crime. However, States' competence to exercise universal jurisdiction should not derive solely from their domestic law, but also from broadly accepted international treaties.

39. The jurisdictional immunities recognized by international law should be interpreted and applied in a manner consistent with the need to combat impunity for grave international crimes. The international community should establish a set of rules in order to resolve doubts concerning the proper application of the principle of universal jurisdiction and to avoid the possibility of abuse, either through traditional channels for recourse to the courts or by other methods. The Working Group should continue its efforts to define the principle and its scope and application; in that context, he drew attention to the non-paper submitted by his delegation at the sixty-sixth session (A/C.6/66/WG.3/DP.1). If the Working Group was unable to make substantial headway on the issue in the short term, his delegation would be open to referring it to the International Law Commission for study.

40. **Mr. Puri** (India) said that universal jurisdiction, unlike traditional bases for jurisdiction, such as

territoriality, nationality or the protective principle, assumed that each State had an interest in exercising jurisdiction over offences that all nations had condemned on the grounds that they affected the interests of all States, even where they were unrelated to the State or States assuming jurisdiction. While piracy on the high seas was the only crime over which claims of universal jurisdiction were undisputed under the United Nations Convention on the Law of the Sea and under general international law, various treaties provided for such jurisdiction in respect of certain other crimes, such as genocide, war crimes, crimes against humanity and torture.

41. The question was whether the jurisdiction provided for under those treaties could be converted into a commonly exercisable jurisdiction, irrespective of whether the other State or States concerned were parties to them. The basis for extending and exercising such jurisdiction was unclear and questions remained regarding the relationship between universal jurisdiction and laws on immunity, pardon and amnesty and regarding its harmonization with domestic law. Furthermore, the principle of universal jurisdiction must not be confused with or be allowed to short-circuit the widely recognized obligation to extradite or prosecute.

42. **Ms. Govinnage** (Sri Lanka) said that universal jurisdiction had complex legal, political and diplomatic implications that had yet to be clarified. As the law in that area evolved, it was important to hear all views on the matter. First used to deal with piracy, the principle had expanded to cover other areas. In accordance with customary international law, local remedies must be exhausted prior to the application of universal jurisdiction. If a country's judicial mechanisms were already dealing with a case, universal jurisdiction should not be exercised in another jurisdiction. It was disturbing that, in certain cases, the judicial officers of countries carrying out investigations had proceeded on a unilateral basis and had ignored the decisions of national courts. Abuse of the principle would ultimately weaken it; in addition, its application risked infringing the principle of the sovereign equality of States enshrined in the Charter of the United Nations.

43. Her Government was concerned about the use of universal jurisdiction to target high-ranking officials and diplomatic agents, which constituted a disturbing attempt to test the scope of diplomatic privileges and immunities. It welcomed the fact that concerned States had begun to recognize the need to prevent such abuses and had introduced constraints such as requiring the approval of senior State authorities before claims could be instituted. The practical application of universal jurisdiction should be guided by international consensus. The Committee and the Working Group on the topic should seek to differentiate between the principle of universal jurisdiction and the treaty-based obligation to extradite or prosecute.

44. **Mr. Seoane** (Peru) said that it could be deduced from the information provided by States over the past four years that all States agreed that universal jurisdiction was a valid tool for combating impunity; that it was a supplementary institution of last resort in the absence of other bases for jurisdiction, such as territoriality and active or passive personality; and that the accused must be present in the territory of the forum State. There were differences of opinion, however, on the crimes to which universal jurisdiction applied and the applicable sources of international law; the question of whether a State could exercise such jurisdiction where not envisaged in its domestic law; the relationship between universal jurisdiction and the regime of immunities for State officials; and the cooperation and assistance mechanisms available to facilitate its exercise, particularly in relation to extradition requests.

45. The Committee was the appropriate forum in which to consider the scope and application of universal jurisdiction. However, it should reflect on whether discussions should continue in the Working Group or whether alternative ways of pursuing the debate would be more appropriate. Moreover, given the prevailing differences of opinion, the input of the International Law Commission was required, particularly as it was already examining other topics closely related to the scope and application of universal jurisdiction.

46. *Mr. Salem (Egypt), Vice-Chair, took the Chair.*

47. **Ms. Lee** (Singapore) said that it was her delegation's understanding that the current discussion of the principle of universal jurisdiction related only to the exercise of criminal jurisdiction. Moreover, the primary bases for the exercise of criminal jurisdiction by States were territoriality and nationality. The application of universal jurisdiction should be considered only when the States concerned were unable or unwilling to take action; the principle was

intended to complement rather than supplant States' jurisdiction, not least because of the practical challenges of conducting a prosecution in a situation where evidence might be difficult to obtain and the attendance of witnesses difficult to secure.

48. Universal jurisdiction should be applied only in respect of particularly heinous crimes that affected the international community as a whole and where there was general agreement that its application was appropriate. Further, it should be applied only in situations where failure to do so would allow the alleged perpetrator to continue to act with impunity, bearing in mind that it was only one of several tools available for combating impunity. Lastly, universal jurisdiction should not be exercised to the detriment of other principles of international law, such as the immunity of State officials from foreign criminal jurisdiction, State sovereignty and territorial integrity.

49. **Ms. Mäkelä** (Finland) said that the principle of universal jurisdiction was an important tool in combating impunity. When a case could not be tried in the State where the crime had been committed, or in a State with an active or passive personality link, or on other grounds of jurisdiction recognized in international law, universal jurisdiction enabled the authorities of a different State to investigate and prosecute the alleged perpetrators. There were, however, significant advantages to be gained from trying a case in the jurisdiction where the crime had taken place, including the possibility for victims to participate and for victims and affected communities to be aware of the efforts being made to bring alleged perpetrators to justice.

50. It was generally agreed that customary international law allowed for universal jurisdiction to be applied in respect of certain international crimes, although views differed as to its scope. In addition, while it was distinct from the obligation to extradite or prosecute, universal jurisdiction was the underlying notion in conventions that established that obligation. Although the informal paper presented by the Working Group at the sixty-sixth session of the General Assembly (A/C.6/66/WG.3/.1) would be of assistance in determining which crimes were subject to universal jurisdiction, the Working Group would need to be able to draw on more in-depth analyses before reaching any conclusions in that regard.

51. Given the complexity of the issues relating to both the scope of the principle of universal jurisdiction and its application, her delegation noted with great interest the proposal that the topic should be referred to the International Law Commission. Impunity was no longer an option, and there should be no attempt to limit the scope or application of the principle of universal jurisdiction in such a way as to suggest otherwise.

52. **Ms. Klečková** (Czech Republic) said that her delegation remained of the view that the question of the scope and application of universal jurisdiction was of a purely legal nature and should be referred to the International Law Commission for study. The Committee operated as a political body and was constantly under time pressure, whereas the Commission was an expert body that could allocate adequate time to the issue. The informal paper submitted by the Working Group, which contained essential elements of a definition of universal jurisdiction, could serve as a frame of reference for the Commission's work. The Commission could also build on its previous work on the topic of the obligation to extradite or prosecute (*aut dedere aut judicare*), which would probably be concluded without a substantive outcome.

53. The principle of universal criminal jurisdiction was recognized in Czech criminal law; universal civil jurisdiction was a valid but separate legal principle that should not be included in the current discussion. The jurisdiction of international criminal tribunals was also a separate issue, since such tribunals operated in accordance with distinct jurisdictional principles provided for in their respective statutes. From that perspective, universal jurisdiction was a matter for domestic law. Nonetheless, both mechanisms had the same rationale: to combat impunity. That was why her Government was working to achieve universal acceptance of the Rome Statute of the International Criminal Court.

54. Her Government distinguished between universal jurisdiction and the obligation to extradite or prosecute, reflected at the national level in the principle of subsidiary universality, which was exercised in the event of refusal to extradite an alleged offender from the Czech Republic. In the case of universal jurisdiction, no extradition request was needed. Under international law, States were not prohibited from extending the application of their laws

and the jurisdiction of their courts to persons, property and acts outside their territory. In the Czech Republic, universal jurisdiction was limited to only some of the offences criminalized under international law.

55. If there was no consensus on the proposal to refer the topic to the International Law Commission, her delegation was ready to participate constructively in the meetings of the Working Group. It was not prepared, however, to support any proposal for the establishment of an international mechanism that would have the power to interfere with national criminal proceedings initiated on the basis of universal jurisdiction. Such a mechanism would be incompatible with her Government's understanding of the independence and impartiality of the judiciary.

56. **Mr. Xiang** Xin (China) said that the debate of the past few years and the written comments submitted by Member States revealed the divergence of views on issues such as the definition, scope and application of universal jurisdiction. His delegation supported the Working Group's approach of limiting the scope of the current item to universal criminal jurisdiction exercised by domestic courts. Such jurisdiction was exercised in respect of certain types of crime regardless of where they were committed, the nationality of the suspect or the victim, and whether or not the crime had jeopardized the national security or major interests of a State. It was therefore distinct from the jurisdiction exercised by international criminal tribunals and the obligation to extradite or prosecute.

57. There was general support for the exercise of universal jurisdiction over cases of piracy on the high seas; in addition, some States believed that the principle was applicable to serious violations of the Geneva Conventions of 1949, while others held the view that it should cover only international crimes stipulated in relevant international treaties. His delegation believed that the scope of the principle should be based first and foremost on practical need: it was necessary to ascertain whether a crime was already covered by the territorial, personal or protective jurisdiction of a State before deciding whether it should be subject to universal jurisdiction. In addition, a decision on the scope of universal jurisdiction should be based on existing customary international law and the provisions of international treaties. The aim of discussions under the agenda item should be the codification of existing rules of universal jurisdiction rather than progressive development.

58. When establishing and exercising universal jurisdiction, States should act within the existing international legal framework, including the principles enshrined in the Charter of the United Nations, such as non-violation of sovereignty and non-interference in the internal affairs of States. They should also comply with international rules relating to the immunity of States, State officials, including Heads of State, and diplomatic and consular personnel. Since universal jurisdiction was supplementary in nature, it should be applied only where no State had established or exercised territorial, personal or protective jurisdiction over a crime.

59. Universal jurisdiction was a sensitive issue of international law; its improper application could have a negative impact on international relations. The issue should be considered in a balanced manner and decided by consensus. His delegation supported a continued exchange of views within the framework of the Working Group.

60. **Ms. Zarrouk Boumiza** (Tunisia) said that universal jurisdiction was an important mechanism for strengthening the rule of law, ensuring equitable justice and ending impunity. However, it must be exercised in strict conformity with the Charter of the United Nations and basic principles of international law, such as the sovereign equality of States, and only in exceptional circumstances and without selectivity or abuse. The international community must agree on a clear definition of universal jurisdiction and determine its scope through discussions in the Working Group.

61. Universal jurisdiction was distinct from, but complementary to, the jurisdiction of international criminal tribunals, which also played a key role in international efforts to end impunity. The International Criminal Court, in particular, had made a valuable contribution to those efforts. However, the Court dealt with serious crimes only after the fact; a mechanism for preventing them was also needed. For that reason, her Government had proposed the creation of an international institutional court as an advisory jurisdictional body responsible for ensuring respect for democratic principles and human rights, in line with the activities of the United Nations and regional organizations. Such a court would also fulfil an evaluation function: it would ensure that laws, regulations and practices in different countries were consistent with generally recognized principles of public governance, such as the principle that power

was based on the will of the people, the need for periodic free and transparent elections, and respect for fundamental human rights.

62. **Ms. Quidenus** (Austria) said that, while her Government supported the basic idea of universal jurisdiction in the interests of the common effort to combat impunity, the concept had given rise to considerable confusion, concern and, at times, tension in the international community. Her delegation commended the efforts of the Working Group but considered that the Committee was not the right forum for discussing such a complex legal issue; detailed analysis was needed in order to avoid certain misunderstandings that still prevailed in the discussions. Her delegation therefore supported the idea of requesting the International Law Commission to consider the topic.

63. **Mr. Nkerabigwi** (Rwanda) said that his Government believed in international justice but was totally opposed to international judicial imperialism, including the abuse of universal jurisdiction. Thousands of criminals who had committed genocide in Rwanda were enjoying safe haven in Western countries, including those regarded as promoters of democracy, the rule of law and good governance, and also in some African countries, despite the fact that his Government and the International Criminal Tribunal for Rwanda had issued warrants for their arrest. Those suspects would not be enjoying protection if universal jurisdiction was being correctly applied. Only a few States, particularly Scandinavian countries, had shown a real commitment to bringing them to justice.

64. Instead of trying Rwandan genocide suspects who were on their soil, some judges in France and Spain had arrogantly issued arrest warrants against senior officials of the current Rwandan Government, apparently for stopping the genocide. The warrants issued without any investigation by one French judge in 2006 had been rejected in 2012 by another French judge, after thorough investigations on the ground in Rwanda. The second judge's report had stated that outdated arrest warrants against Rwandan officials constituted strong proof that universal jurisdiction had been applied not in the interests of combating impunity but rather for malicious political reasons.

65. His delegation urged the General Assembly to agree on how universal jurisdiction could be used to advance justice; its abuse undermined key principles of international law, particularly the sovereign equality of all States and the immunity of State officials. His Government strongly supported the position of the African Union that arrest warrants issued on the basis of the abuse of universal jurisdiction should not be executed.

66. **Mr. Leonidchenko** (Russian Federation) said that his delegation recognized the potential of universal jurisdiction for combating impunity through the prosecution of individuals responsible for the most serious international crimes. However, the legal parameters of the concept remained somewhat vague and it would be premature to say that consensus was emerging on the issue. Until that happened, at least on the scope of universal jurisdiction and the conditions for its application, particular caution should be exercised. Arbitrary application or abuse of the principle could cause complications in relations between States; there were many current examples of such cases. Universal jurisdiction must therefore, as a minimum, be exercised in accordance with the rules of customary international law, in particular those relating to the immunity of State officials. It would be better to use other, less controversial, tools to combat impunity for the most serious international crimes. It should also be borne in mind that the work of the international criminal justice system, in particular the International Criminal Court, was unrelated to the topic of universal jurisdiction.

67. His delegation was not opposed to continued discussion of the topic by the Committee. However, the debate had not advanced significantly in the past year, and it was unlikely that further progress could be made on the basis of the material currently at the Committee's disposal. There was, therefore, no realistic prospect of developing international standards and criteria for the application of universal jurisdiction.

68. **Mr. Galicki** (Poland) said that the principle of universal jurisdiction was closely related to other topics being considered by other United Nations bodies besides the Committee; for example, it was related to the principle *aut dedere aut judicare*, which was under consideration by the International Law Commission. A careful analysis of State practice was necessary in order to confirm whether or not both principles existed in customary international law. Some States had noted, in their comments submitted to the Commission, that the principle of universal jurisdiction was crucial to the effective implementation of the obligation to extradite

or prosecute, and some had suggested that universal jurisdiction should be extended for that reason. However, while the Secretary-General's reports on the scope and application of the principle of universal jurisdiction showed that State practice was tending towards uniformity, it was not yet possible to conclude that the principle was a generally binding rule of customary international law.

69. In general, Poland applied the principle of territorial or personal jurisdiction, although it also applied the principle of universal jurisdiction in limited cases. Under its Penal Code, regardless of the law in force in the place of commission of an offence, Polish penal law applied to Polish citizens and foreigners facing extradition who had committed an offence abroad, where Poland was obliged to prosecute them under an international convention. In practice, the application of that provision was usually restricted to the most serious crimes, such as war crimes, crimes against humanity and genocide. Polish penal law also applied to foreigners who had committed an offence abroad against the interests of the Republic of Poland or of a Polish citizen, legal entity or organizational unit that did not have a legal personality, to foreigners who had committed a terrorist offence abroad, and to foreigners who had committed abroad an offence that was subject under Polish law to a penalty exceeding two years' imprisonment, where the perpetrator was present in Polish territory and no decision on his or her extradition had been taken. In addition, civil claims could be filed as an adjunct to criminal proceedings.

70. **Ms. Elyahou** (Observer for the International Committee of the Red Cross) said that universal jurisdiction over serious violations of international humanitarian law was rooted in both treaty law and customary law. The Geneva Conventions of 1949, while not expressly stating that jurisdiction was to be asserted regardless of the place of commission of the offence, had generally been interpreted as providing for universal jurisdiction over war crimes. Moreover, although the relevant provisions of the Geneva Conventions were restricted to grave breaches of those instruments, State practice had confirmed a customary rule whereby States had the right to exercise universal jurisdiction over war crimes, including serious violations during non-international armed conflict of common article 3 of the Geneva Conventions and Additional Protocol II and other crimes set forth in article 8 of the Rome Statute of the International Criminal Court.

71. A number of other instruments placed an obligation on States to exercise universal jurisdiction over crimes committed during armed conflict, including the Second Protocol to the Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict and the International Convention for the Protection of All Persons from Enforced Disappearance. Where States were unable or unwilling to prosecute their own citizens or other individuals who committed such crimes in their territory or under their jurisdiction, the exercise of universal jurisdiction by other States could be effective in closing the impunity gap.

72. Universal jurisdiction could be exercised either through the enactment of domestic laws or through the investigation and trial of alleged offenders. More than 100 States had established universal jurisdiction over serious violations of international humanitarian law; in recent years, an increasing number of suspected perpetrators of war crimes committed during both international and domestic armed conflicts had been tried on that basis in domestic courts. In most cases, the States of nationality of the accused had not objected to the exercise of universal jurisdiction. States might want to attach conditions to the application of universal jurisdiction, such as the existence of a link to the forum State. The aim of such conditions should be to increase the predictability and effectiveness of universal jurisdiction and not to limit the possibilities for prosecuting suspected offenders. Moreover, while the application of universal jurisdiction might involve taking account of national policy considerations, the independence of the judiciary and fair-trial guarantees must be respected at all times.

73. In accordance with its mandate under the Geneva Conventions, the International Committee of the Red Cross had created numerous tools to aid States in their efforts to implement a system for suppressing serious violations of international humanitarian law. In order to be truly effective, all such systems must include the principle of universal jurisdiction. The International Committee of the Red Cross stood ready to contribute to any future efforts by the United Nations in that regard.

The meeting rose at 5.35 p.m.